



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/155137

PRELIMINARY RECITALS

Pursuant to a petition filed January 30, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on February 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Wisconsin IRIS correctly denied Petitioner's request to use her IRIS funds to pay for five dental crowns.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Alana Brown, IRIS Quality Service Specialist
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On December 11, 2013, Wisconsin IRIS sent Petitioner a notice indicating that it was denying Petitioner's request for dental crowns. (Exhibit 2)
3. On December 19, 2013, the Petitioner sent Jody Brassfield, the IRIS Section Chief for the Department of Health Services, a letter requesting an independent review. (Exhibit 3, pg. 4)

4. On January 7 or January 8, 2014, Wisconsin IRIS sent Petitioner a notice indicating that it was again denying her request for dental crowns. (Exhibit 1)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 27, 2014. (Exhibit 1)
6. Petitioner has five damaged anterior teeth that need to be repaired, four maxillary and one mandibular. (Exhibit 3, pgs. 4-8)

DISCUSSION

The petitioner receives some medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a self-directed, fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

The IRIS program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

In furtherance of implementing this law, the IRIS program has developed various policies regarding funding of goods and services such as *Policy: SC 16.1, IRIS Funding for Goods, Supports and Services (September 1, 2010 – September 30, 2011)* and the *Medicaid Services and Summaries Definitions* manual.

BURDEN OF PROOF

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for services from IRIS, the applicant has the initial burden to show that the requested services meet the program's guidelines for approval. However, where the agency discontinues a service, the initial burden falls upon the agency to show that it acted correctly.

In the case at hand, the Petitioner is requesting a new service, the restoration of five broken teeth, using crowns. Thus, the burden of proof falls upon the Petitioner to show that the requested services meet the program's guidelines.

WHAT TYPE OF SERVICE DO RESTORATIVE DENTAL SERVICES FALL UNDER?

Looking at the denial letter issued to Petitioner, Wisconsin IRIS did not explain why it was denying Petitioner's request for restorative dental services, beyond stating, "Dental crowns do not meet the definition of allowable good, service or support per the approved HCBS Waiver". [REDACTED] testified that she contacted the Department of Health Services for further guidance because she is aware of the fact that the IRIS program has paid for crowns in other cases. [REDACTED] testified that as of the hearing date, she received no response from the Department of Health Services.

Even though the Department of Health Services did not respond to [REDACTED]'s request for additional explanation, I am still obligated to review Petitioner's case, under the existing law.

The following is a list of services approved by the Center for Medicare and Medicaid Services (CMS) in the Home and Community Based Services (HCBS) waiver agreement for Wisconsin IRIS:

1. adult day care
2. daily living skills training
3. live-in caregiver
4. prevocational services
5. respite
6. supported employment
7. nursing
8. 1-2 bed adult family home
9. 3-4 bed adult family home
10. adaptive aids
11. CBRF (Community-based Residential Facility)
12. communication aids vendors/interpreter
13. consumer education and training
14. counseling and therapeutic services
15. customized goods and services
16. day services
17. home delivered meals
18. home modifications
19. housing counseling
20. PERS (Personal Emergency Response System)
21. relocation housing start up and related utility costs
22. residential care apartment complex
23. specialized medical equipment and supplies
24. specialized transportation 2
25. specialized transportation
26. support broker
27. supportive home care
28. vocational futures planning

The waiver agreement with Wisconsin can be seen on-line at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html?filterBy=1915> This list complies with the federal regulations covering Home and Community Based waivers programs. See 42 CFR § 440.180(b), above.

The services are further defined in the *Medicaid Waiver Services Summary Definitions*. (A copy of the relevant portion of the *Medicaid Waiver Service Summary Definitions* will be sent to the Petitioner.) "Counseling and Therapeutic Services" is defined as, "the provision of professional treatment-oriented to participant's identified needs for physical, medical, personal, social behavior, cognitive, developmental, emotional, or substance abuse treatment. The goal of treatment is to maintain or improve participant health, welfare, or functioning in the community." *Medicaid Waiver Services Summary Definitions*, pgs. 30 and 31.

Dental services are professional treatments oriented to meet a person's need for medical treatment. As such, restorative dental services would fall under "Counseling and Therapeutic Services".

ARE RESTORATIVE DENTAL SERVICES COVERED THROUGH IRIS?

In the *Medicaid Waiver Services Summary Definitions*, it states that "Counseling and Therapeutic Services" **exclude** 1) In-patient services, 2) Services provided by a physician and 3) Services available through the Medicaid State Plan or that are covered by other insurance including Medicare.

Contrary to what Petitioner has been told by her dentist, restorative dental services are, in fact, covered by Medicaid:

Wis. Admin Code §DHS 107.07 Dental services.

- (1) COVERED SERVICES; DENTISTS AND PHYSICIANS. Except as provided under subs. (2), (3), (4) and (4m), all of the following dental services are covered services when provided by or under the supervision of a dentist or physician within the scope of practice of dentistry as defined in s. 447.01 (8), Stats.:
- (a) Diagnostic services.
 - (b) Preventive services.
 - (c) Restorative services.
 - (d) Endodontic services.

The On-line provider handbook indicates that crowns are a type of restorative service that Medicaid will cover:

Topic #2876

Crowns

BadgerCare Plus allowable crowns include anterior resin-based composite crowns, full-cast predominantly base metal crowns (upgraded crowns), prefabricated resin crowns, prefabricated stainless steel crowns with resin window, and prefabricated aesthetic coated stainless steel crowns. Dentists are not obligated to provide upgraded crowns.

For cases where Medicaid reimbursement for an upgraded crown (D2791) is less than the laboratory fee, providers may initiate reconsideration of an allowed claim by submitting an [Adjustment/Reconsideration Request](#) along with a copy of the laboratory bill to receive additional reimbursement — up to the amount of the laboratory fee.

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks>

Because crowns are a Medicaid covered service, it is excluded from IRIS coverage. **Petitioner's provider should be submitting a bill / prior authorization request to Medicaid for the five crowns.**

It should be noted that dental services are not specifically listed in 42 CFR § 440.180(b), as a service covered by waiver programs. In addition, 42 CFR §441.482 further describes permissible purchases in self-directed programs:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

It is debatable whether restored teeth directly increase a person's independence, substitute for human assistance or otherwise prevent a person from going into a nursing home/becoming institutionalized.

CONCLUSIONS OF LAW

Wisconsin IRIS correctly denied Petitioner's request to use her IRIS Funds to pay for restorative dental work consisting of five crowns.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

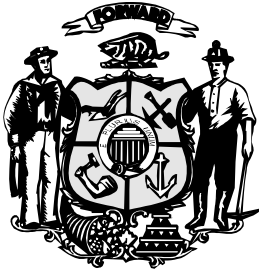
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of March, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 3, 2014.

Bureau of Long-Term Support